

# Terms and Conditions for Debt Collection Services

of **Inkasso Merkur GmbH**, hereinafter "MERKUR".

## 1. Scope of application

**1.1. Contract basis.** These Terms and Conditions for Debt Collection Services are applicable only to transactions with business undertakings. MERKUR concludes contracts and provides services only on the basis of these Terms and Conditions for Debt Collection Services, as amended by the Professional Rules and Rules of Conduct for Debt Collection Agencies (*Standes- und Ausübungsregeln für Inkassoinstitute*) and the Ordinance on Maximum Rates of Compensations of Debt Collection Agencies (*Höchstsätze der Inkassoinstituten gebührenden Vergütungen*), as amended from time to time, Federal Law Gazette No. 141/1996.

These Terms and Conditions for Debt Collection Services, as amended from time to time, govern all legal relationships between MERKUR and the customer and, from the date of conclusion of the first contract, therefore automatically govern also all other contracts that are concluded between MERKUR and the customer, even if these Terms are not specifically incorporated by reference.

**1.2. Future changes.** Changes of the Terms and Conditions for Debt Collection Services of MERKUR will be notified to the customer in writing and shall be deemed to have been agreed, unless the customer objects to changes in writing within four weeks.

Once the new agreement enters into force, changes in the Terms and Conditions for Debt Collection Services will be applicable also to all other current contracts.

**1.3. Supplementary and / or special agreements.** Any supplementary and / or special agreements, both prior to the conclusion and during the term of a contract, are valid only if made in writing. This shall also apply to any waiver of the written form requirement.

### 1.4. Contract elements of the customer.

MERKUR explicitly objects to the inclusion of the customer's legal texts such as terms and conditions or contract clauses. Whenever MERKUR simply accepts requirements regarding the customer's scope of services, MERKUR shall not be deemed to have accepted the customer's legal texts, even if these requirements should contain legal phrases (such as "Our Terms and Conditions apply").

**1.5. Severability.** Should any term of a contract be invalid or unenforceable, the invalid term shall be replaced by a valid term that closest reflects the economic meaning and purpose of the invalid term.

## 2. Conclusion and term of contract

**2.1. Debt collection order.** The customer's relevant debt collection order (offer) to MERKUR forms the basis for the conclusion of a contract. The customer shall be bound by that offer two weeks after it was received by MERKUR.

**2.3. Acceptance by MERKUR.** A contract is concluded only once MERKUR has accepted the customer's order in writing. An order shall generally be accepted in writing, for example by way of an acknowledgement of order, unless MERKUR takes action on behalf of the customer based on the order which suggests that MERKUR will accept the order. By simply confirming receipt of an order, MERKUR shall not be deemed to have accepted an order.

**2.4. Term of a contract.** A debt collection order starts on the date on which the contract is awarded until the full debt, including costs and expenses, was recovered or the claim has finally become time-barred.

MERKUR may unilaterally cancel the contract if any further action on the part of MERKUR no longer seems appropriate (for example because a claim is apparently non-recoverable). This will not affect the right of MERKUR to receive a compensation.

MERKUR reserves the right to reject or suspend an order without stating any reason.

## 3. Scope of services, order processing, and customer's duty to cooperate

**3.1. Place of performance.** Place of performance shall be MERKUR's domicile.

**3.2. Scope of services.** Services include the out-of-court recovery of the customer's outstanding, non-disputed claims vis-à-vis third parties (hereinafter "debtors") by MERKUR on behalf and for the customer's account. MERKUR will procure and coordinate the enforcement of these claims in court, if necessary, and will handle the corresponding payment transactions.

**3.3. Disputed claims.** The customer shall be obliged to immediately point to the fact that claims are disputed.

**3.4. Negotiations and correspondence.** The customer will leave negotiations and correspondence to MERKUR and will inform MERKUR immediately in writing of any contact, proposal and payment made by the debtor.

MERKUR is entitled to reach necessary agreements with the debtor on behalf of the customer, such as payment agreements or instalment plans, without prior consultation with the customer. The customer undertakes not to reach any agreements with the debtor without consulting MERKUR.

**3.5. Taking part in recovery of compensation.** The customer shall do anything and omit nothing to ensure the recovery of the full compensation due to MERKUR. In particular, no reduction of the compensation due to MERKUR will be granted or promised to the debtor. Should a claim be recovered in court, the customer will seek to recover the fees from the title of damages from the debtor. In case of non-compliance with this obligation, the customer shall reimburse MERKUR for all fees according to the Ordinance Federal Law Gazette No. 141/1996, as amended from time to time, whether or not these fees could have been recovered from the debtor.

**3.6. Appointing legal representation.** A lawyer will be engaged as an integral part of a debt collection order. MERKUR may select a lawyer in agreement with and on behalf of the customer to recover a claim in court. The lawyer will act for the account and at the risk of the customer.

The lawyer is not a vicarious agent of MERKUR. MERKUR is liable only for culpa in eligendo. MERKUR shall not be liable at all if the lawyer is engaged at the customer's initiative.

**3.7. Customer's duty to cooperate.** The customer shall promptly provide any information in writing and make available to MERKUR without request in digital format as customary files any information that is necessary for the provision of services by MERKUR.

Already when the contract is awarded, the customer shall make

available to MERKUR any documents such as purchase orders, acknowledgements of orders, delivery notes, invoices, warning letters as well as any terms and conditions.

The customer shall promptly supply any information or provide any services that may be necessary not until MERKUR is providing the services.

The customer shall independently verify the fitness, accuracy and lawfulness of any information and services provided by the customer.

The customer shall be liable for any damage suffered or incurred due to the customer's insufficient, delayed or omitted cooperation, including but not limited to any extra costs which MERKUR has thereby incurred.

If MERKUR is held liable by third parties due to any infringement in connection with information or services provided by the customer, the customer shall hold harmless and indemnify MERKUR and assist MERKUR in connection with the defence of any claims of third parties.

### **3.8. Destruction of files and parts of files.**

MERKUR may destroy closed files and parts of files as well as documents provided three months after termination of the contract, unless the customer has reclaimed these until then.

**3.9. Instructions to MERKUR.** Any instructions which the customer may give to MERKUR are effective only if they were given in writing and were verifiably received by MERKUR.

## **4. Compensation**

**4.1. Prices.** All prices are denominated in Euros, plus legal value added tax, ex MERKUR business domicile or office.

**4.2. Fees.** If an amount owed that is transferred for collection can be successfully recovered, MERKUR will charge the customer a compensation equal to the default interest which the customer is entitled to recover from the debtor. MERKUR is only entitled to a contingent fee at a rate of 40% for claims already enforced in court.

**4.3. Additional services.** All services provided by MERKUR which are not expressly covered by the agreed compensation, including but not limited to extra services agreed later on, will be charged separately.

**4.4. Unjustified withdrawal.** MERKUR will still be entitled to the agreed fee if the customer withdraws from the entire or parts of the contract without any grossly negligent or intentional fault of MERKUR for good reason within the customer's control.

**4.5. Price adjustments.** MERKUR may reasonably adjust prices on an annual basis in consideration of the Consumer Price Index and changes in the Ordinance on the Maximum Rates of Compensations Due to Collection Agencies, Federal Law Gazette 141/1996.

## **5. Payment**

**5.1. Maturity and payment.** Invoices of MERKUR are payable on a net cash basis without any deduction as of the invoice date within 14 days of receipt of the invoice, unless otherwise agreed.

**5.2. Dedication of payments.** Any payments received from the debtor will first be dedicated to cover MERKUR's costs and expenses and then to cover the customer's claim.

**5.3. Cash outlay costs.** Cash outlay costs such as legal fees etc. will be charged directly to the customer.

**5.4. No set-off and retention.** Even in case of closely related claims, the customer may not set off its own claims against the claims of MERKUR, unless the customer's claims were acknowledged by MERKUR in writing or established by a court. The customer has no right of retention.

**5.5. Late payment.** In the case of late payments, we will charge interest at a rate of 8 % above the base interest rate per year. The customer shall pay all costs and expenses arising in connection

with the recovery of an amount due, including but not limited to collection charges or other costs necessarily incurred for the proper assertion of rights.

## **6. Data protection**

**6.1. Data protection by MERKUR.** Personal data of the controller (customer) or its relevant employees are processed by MERKUR for the purpose of performing the contract on the basis of the controller's voluntary consent (e.g. in case of special categories of personal data), the existing legal relationship and legal provisions.

There is no obligation to give that consent (e.g. in case of special categories of personal data) and to conclude the contract. However, as a consequence of a failure to give that consent or to conclude the contract, the order cannot be accepted.

**6.2. Further processing.** For the purpose of performing the contract, MERKUR will further process data for direct marketing in forms not requiring consent, such as the addressed advertising materials sent by post, on the basis of an agreement to be concluded.

Personal data are further processed for the purpose of direct marketing in forms for which a consent is necessary, such as advertisements sent by email or the placing of personal ads only on the basis of the controller's additional voluntary consent. The controller is not obliged to give that consent. If that consent is not given, the controller would simply not receive any form of advertising for which its consent is necessary.

**6.3. Transfer.** All data are subject to the agreed or legal obligation of confidentiality and the protection of personal data. Except for the transfer of data to typical commercial recipients such as banks, tax advisers, lawyers, mail-handling services providers etc., the controller's data are transferred only on the basis of legal provisions and in agreement with the controller.

**6.4. Worldwide processing.** The controller consents to the worldwide processing of its data, in particular to allow MERKUR remote access to carry out processing operations in relation to orders, for example in cases of emergency during business travels of MERKUR.

**6.5. Storage period.** The controller's data will be stored for a maximum period of thirty years after completion of the orders for the purpose of documentation and to meet legal obligations.

**6.6. Right of withdrawal.** Controller may withdraw its consent at any time. If consent was given in writing, the right of withdrawal must also be exercised in writing; a consent to receipt of advertising by email may be withdrawn also by clicking the unsubscribe link. In this case, we will cease all processing operations, unless there is any other legal basis. The exercise of the right of withdrawal does not affect the lawfulness of data processed until that right was exercised.

**6.7. Right to object.** The controller may object to the processing of its personal data for the purpose of direct mail. In this case, we will no longer process your personal data for the purpose of direct mail.

**6.8. Rights of data subjects.** The controller and its relevant employees have the right to information, to rectification and erasure of their personal data, the right to restrict processing, the right to data portability and the right to file a complaint with the data protection authority (Österreichische Datenschutzbehörde, Barichgasse 40-42, 1030 Vienna, phone: +43 1 52 152-0, E-Mail: dsb@dsb.gv.at).

## 7. Liability

### 7.1. Compensation for damage and other claims.

The customer cannot seek compensation for damage and assert claims based on other liability provisions, including but not limited to recourse claims, unless these are based on severe gross negligence or intent of MERKUR. It shall be the customer's responsibility to prove the degree of fault. In particular, MERKUR shall not be liable for the successful recovery of claims.

These claims of the customer shall forfeit six months after damage and damaging party were identified, and in any event three years after the incriminated action has taken place. This limitation of liability shall not include claims asserted based on personal injury and other mandatory liability rules.

**7.2. Limitation of claims to be recovered.** MERKUR does not monitor and is not liable for limitation periods. It shall be the customer's responsibility to watch limitation periods and to take timely steps to prevent limitation of claims. The customer shall separately indicate claims that become time-barred within 6 months of the contract award date.

**7.3. Grace period.** If the customer does not fulfil the contract in accordance with the contract terms, the customer may assert claims only if the customer has granted MERKUR a reasonable grace period of at least 14 days in writing. This applies also if the contract is terminated for good cause.

**7.4. Withdrawal.** The customer may withdraw from the contract in writing by sending a registered letter.

## 8. Final provisions.

**8.1. Applicable law.** All legal relationships and circumstances between the customer and MERKUR shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of international conflict of law rules.

**8.2. Jurisdiction.** All disputes arising between MERKUR and the customer shall be referred to the Austrian court having jurisdiction *ratione materiae* for the City of Salzburg. MERKUR may also sue the customer at the general venue of MERKUR and the customer.

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Date, Signature